

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

JAN -6 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0260-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
KEVIN RYAN PUCKETT,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20022323

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

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By Ulises A. Ferragut, Jr.

Phoenix
Attorneys for Petitioner

PELANDER, Chief Judge.

¶1 In this petition for review, Kevin Ryan Puckett challenges the trial court's denial of the petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim.

P. We will not disturb the court’s denial of post-conviction relief absent an abuse of its discretion. *State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996).

¶2 In February 2003, Puckett pled guilty to six counts of armed robbery, all dangerous-nature offenses. A month later, the trial court sentenced him to concurrent, slightly aggravated terms of imprisonment of 11.5 years, based on findings that the offenses involved multiple victims, that the crimes were committed for pecuniary gain, that at least some of the victims suffered significant emotional harm, and that Puckett had a history of using illegal drugs. Puckett filed his Rule 32 notice of post-conviction relief in June 2007 and, in the petition that followed, maintained his sentences violated principles announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004). He argued these decisions effected a significant change in the law that should be retroactively applied to his sentencing.

¶3 Puckett conceded that the trial court’s reliance on two of the aggravating circumstances identified at his sentencing—multiple victims, a finding inherent in the factual basis for his plea, and Puckett’s drug use, which he admitted at sentencing—complied with the requirement that “a jury find beyond a reasonable doubt, or a defendant admit, any fact (other than a prior conviction) necessary to establish the range within which a judge may sentence the defendant.” *State v. Martinez*, 210 Ariz. 578, ¶ 26, 115 P.3d 618, 625 (2005). He argued, however, that our supreme court in *Martinez* had erred in concluding that, “once a jury finds or a defendant admits a single aggravating factor, the Sixth Amendment [of the United States Constitution] permits the sentencing judge to find . . . additional factors

relevant to the imposition of a sentence” by a preponderance of the evidence. *Id.* The trial court denied relief, finding Puckett’s argument would be foreclosed by *Martinez* even if *Apprendi* and *Blakely* were applied retroactively.

¶4 Puckett then filed this petition for review, in which he acknowledges that this court, like the trial court, is bound by *Martinez* and all other decisions of our supreme court. *See, e.g., State v. Sullivan*, 205 Ariz. 285, ¶ 15, 69 P.3d 1006, 1009 (App. 2003). He states the primary purpose of his petition is thus to exhaust his remedies, “to seek reconsideration by the Arizona Supreme Court of its decision in *Martinez*[,] . . . and potentially to seek review of the *Martinez* interpretation of *Blakely* in the federal court system.”

¶5 We are satisfied that the trial court clearly identified and thoroughly analyzed the issues presented by Puckett’s petition for post-conviction relief and correctly applied controlling Arizona authority. Consequently, we need not revisit its analysis. *See generally State v. Whipple*, 177 Ariz. 272, 866 P.2d 1358 (App. 1993). Although we grant the petition for review, we find no abuse of the court’s discretion. Accordingly, we deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge